

**SUPREME COURT MINUTES  
WEDNESDAY, OCTOBER 5, 2005  
SPECIAL SESSION – REDDING, CALIFORNIA**

The Supreme Court of California convened for a special session at the Redding City Hall, Council Chambers, 777 Cypress Avenue, Redding, California, on October 5, 2005, at 9:00 a.m.

Present: Chief Justice Ronald M. George, presiding, and Associate Justices Kennard, Baxter, Werdegarr, Chin, and Moreno.

Officers present: Frederick K. Ohlrich, Clerk, and Gail Gray, Calendar Coordinator.

**OPENING REMARKS: HISTORIC SPECIAL SESSION**  
(Morning Session)

**CHIEF JUSTICE GEORGE:** Well, good morning. It is with great pleasure that I welcome you to this special session of the California Supreme Court.

I would like to begin by introducing my colleagues on the bench. And to my immediate right is Justice Joyce Kennard, to her right is Justice Kathryn Werdegarr, and to her right is Justice Carlos Moreno. To my immediate left is Justice Marvin Baxter and to his left is Justice Ming Chin.

And to his left, you will notice a vacant seat. One of our colleagues recently joined the federal bench and we are awaiting an appointment to that position by the Governor. As is true whenever there is a vacancy on our court, the seventh seat on the bench will be filled during each oral argument today by a different member of the Court of Appeal drawn in alphabetical order from the list of appellate justices. That person will sit as a justice pro tem. on our court.

I also would like to introduce the court's very able clerk administrator, Fritz Ohlrich, who, as is true in so many areas, has been a great help in setting up this session.

Next, I would like to introduce Presiding Justice William D. Gallagher of the Shasta County Superior Court. He and his colleagues on the bench and court staff have been most gracious and energetic in helping make this session possible.

Judge Gallagher.

**PRESIDING JUDGE WILLIAM GALLAGHER:** Chief Justice George, distinguished Associate Justices and assigned members of the court, ladies and gentlemen, this is an historic day in Redding and Northern California because never before has the California Supreme Court convened for oral arguments at a location north of Sacramento. And we are honored by their decision to do so today.

On behalf of the Superior Court of the County of Shasta, the Court of Appeal, Third Appellate District, and the City of Redding, we welcome you and thank you for the opportunity to host this memorable event.

To the students, educators, attorneys, and members of the public who have gathered to witness today's proceedings, I am sure what you see and hear today will become an indelible memory which vividly attests to the greatness of the judicial process and the rule of law, which are among the bedrock principles upon which our great nation and this great state are founded.

Thank you all for being with us today.

**CHIEF JUSTICE RONALD GEORGE:** Thank you, Presiding Judge Gallagher. I would now like to call upon the Third Appellate District Administrative Presiding Justice, Arthur Scotland, who has contributed so much as co-host of this event. He and the justices and staff of the Third District have been instrumental in creating the materials that are being used by the students who will be viewing the oral arguments today, both live and by telecast in their classrooms.

Presiding Justice Scotland.

**PRESIDING JUSTICE ARTHUR SCOTLAND:** Thank you very much, Chief Justice George and Associate Justices of the Supreme Court. I, too, thank you for making this a very historic session in Shasta County, one of the 23 Northern California counties that are within the jurisdiction of the Court of Appeal, Third Appellate District.

By holding this special session here in real cases, before, I think there are going to be about 700 high school students here, you really are providing them with a unique opportunity to see our state's highest court in action and to learn much more about our judicial system. And beyond just sitting and watching cases, you have invited certain students to ask you questions and I really commend you for this extraordinary program that you have.

The Court of Appeal, as the Chief Justice indicated, has been very pleased, with the assistance of the California Supreme Court, to prepare case summaries for each of the

cases on today's calendar and also to compile some other educational materials that we have provided to the teachers and to the students to assist them in preparing for today's session.

For those of you who are watching on television, thanks to John Hancock, who is the President and Chief Executive Officer of the California Channel. You, too, can have access to these case summaries and educational materials by going to the court's Web site, which is *www.courtinfo*, that's c - o - u - r - t - i - n - f - o, dot, c - a, dot, g - o - v. And if you click on "Courts" and then "Court of Appeal, Third Appellate District," you will find our home page and there is a spot where you can click to obtain that information. And also it is available on the Web site of the Shasta County Superior Court.

Chief Justice and Associate Justices, I can tell you from our experience, coming to Shasta County – when I say "our," the Court of Appeal. We came here in 2000 to inaugurate our award-winning outreach program – and we were truly impressed by the insightful questions, by the interest of the students, by the very thoughtful questions that they asked the court. I think that's a real credit to the quality of education that they are receiving in this area of our state. And I'm confident that after this session, you'll be equally impressed by the students that are here today.

So, I wish all of you my best wishes for a most informative and successful session.

**CHIEF JUSTICE RONALD GEORGE:** Thank you, Presiding Justice Scotland.

I first visited the Shasta County courts in December of 1996 soon after becoming Chief Justice of California as part of a series of visits I made to the courts in each of California's 58 counties. At that time, trial courts were divided into superior and municipal courts and their funding came mainly from the county in which they were located.

Since that visit, when I attended the rededication of Shasta's courthouse, California's court system has undergone fundamental reforms that have changed everything from the way trial courts are funded to their unification into one level of trial court. The motivating force behind these reforms was our commitment to enhancing the ability of the courts to serve the people of California and to providing meaningful access to the courts for all individuals.

Our court system is well aware that in order to achieve these goals, more than structural change is necessary. We much reach out to the communities we serve to better meet their needs and expectations and to ensure that the public understands the important

role of the courts as fair and impartial adjudicators, rendering decisions based upon the law and precedent and not in response to public preference or political pressures.

The California Supreme Court has embarked on sessions such as today's in order to further these objectives. Our court regularly hears oral argument in three locations: San Francisco, where we maintain our headquarters, Sacramento, and Los Angeles. Over the last few years, we have ventured beyond those sites and have held sessions in San Diego, San Jose, Fresno, and Orange County.

Shasta County has some direct ties to the California Supreme Court through Justice Jessie Carter, who served on our court from 1939 to 1959 and who had many local connections. He was born in Trinity County, later moving with his family to Siskiyou County and then to Redding. The family was back in Siskiyou when young Jessie Carter started working and accumulated enough money to venture to school in San Francisco. He eventually attended law school and, after a brief stint in San Francisco, returned to Redding where he entered into both the legal and political life of the community.

Carter served as District Attorney, was elected as a member of the first Board of Governors of the State Bar of California, and in the late 1930's served as City Attorney for Redding and Shasta. He was appointed as an associate justice of the California Supreme Court in 1939, ably serving for 20 years. Justice Carter was known for the diligence he showed in his work at the court and for the vigorous language he employed in his numerous dissenting opinions.

The Supreme Court has convened its session today in City Hall in order to have a space large enough to accommodate a substantial number of spectators, reflecting the collaborative efforts undertaken in the community to engage in local students' attendance in this outreach effort. Under the leadership of Judge Monica Marlow, chair of the planning committee for this event, bench officers, and court administrators and staff from Shasta County have worked diligently to make this event a success. The City of Redding, and specifically City Manager Mike Warren and his staff, have provided invaluable assistance by making the city's facilities available for the court's use and otherwise helping with the court's visit.

The planning committee has overseen the process of contacting local educational institutions. Students from public and private high schools in Shasta County, as well as from Simpson University and Shasta College, are in attendance; high school students from Tehama, Trinity, Lassen, and Siskiyou Counties also are involved. I understand that some of them are traveling as much as three hours each way to attend today's session.

Comprehensive background materials for the cases being argued have been provided and can be found online through links created among the Web sites of the Shasta County Superior Court, the Third District Court of Appeal, and the Supreme Court. Included in these materials are case summaries and links to the briefs filed in the cases. Attorney volunteers have been available to work with the students in evaluating the written materials and the oral arguments and many already have visited the schools at the request of school officials.

California Channel is broadcasting this oral argument session throughout Northern California, making the proceedings available in classrooms to the students unable to join us in the courtroom today and to the community at large. California Channel has been a committed partner in each of the California Supreme Court's special sessions that have been held outside our traditional venues and we are very grateful for its participation. Together, we are using a variety of technological tools to expand the accessibility of these court proceedings to the community and to increase the exchange of information provided by the court's visit.

We anticipate some 700 students will be in the courtroom at various times today; thousands more will watch the television transmission of the oral arguments. We hope that their interest in our judicial and legal system will be stimulated by viewing these proceedings. The link to the court Web site leads easily to other information that provides background information on the law and on careers in the law, the court system, legal assistance and a host of other useful material.

The success of today's special court session would not be possible, however, without the invaluable assistance of the justices and staff of the Third Appellant District, as well as local superior court judges. The contributions of court staff including attorneys, clerks, judicial assistants and the judicial protection officers have been crucial together with the very helpful collaboration of the city, county and school officials.

The members of our court hope that today's oral arguments will have significance far beyond the direct participants. We believe these court sessions will be a valuable and insightful learning experience, not only for local students but statewide for members of the public who observe the telecasts of these proceedings of the California Supreme Court. Hopefully, this special session will stir the interest of the students here today and of others watching electronically in understanding more about our legal system and the rule of law that protects us all. Perhaps one day, some of the students listening attentively will be in our seats or sitting at the counsel table, ready to present crucial argument that will help shape the future of the law. I certainly hope so.

Once again, on behalf of the California Supreme Court, I want to indicate how pleased we are to be here today and to express our great appreciation to all who have made this program possible. This experience demonstrates once again that working together we can achieve extraordinary objectives that benefit us all.

The court now entertains questions from students present in the courtroom. We'll have the first student come forward.

**FIRST STUDENT:** Mr. Chief Justice and Associate Justices of the Supreme Court, I am Alex Veehill of Fall River School and I'm asking a question on behalf of Casey Hubauer, also of Fall River High School. His question reads, "How does a case in the appeal process reach the California Supreme Court and how long does that take?"

**CHIEF JUSTICE RONALD GEORGE:** We have one level of trial court and the party who loses in the superior court may take an appeal as a matter of right to the Court of Appeal. Thereafter – and that really is the end of the line for well over 90 percent of the cases – there is the right to petition our court to have our court take up a case. And we cannot possibly, with what's probably the largest judicial system anywhere in the world, with over 1600 judges and 400 court commissioners, we cannot take up every case that may have been wrongly decided in our view. So, we conference every Wednesday morning when we don't have an oral argument session and we may have anywhere from 200 to 400 cases asking us to take the case up. And we will take up a case only when it involves a substantial question of statewide importance and/or there is a conflict in the way one of our six Courts of Appeal around the state has decided a particular issue in one case and the way another Court of Appeal has decided the same issue in another case.

So those, with the exception of death penalty cases, are the proceedings by which a case may reach the California Supreme Court. And in terms of how long that takes, it can take really a couple of years easily because the transcript has to be taken up, prepared, briefs are written in the Court of Appeal and then in our California Supreme Court.

Thank you for your question.

**FIRST STUDENT:** Thank you for answering it.

**SECOND STUDENT:** Good morning, Mr. Chief Justice and Associate Justices. I am Jamie Herman from Shasta High School and I would like to ask why there is an automatic appeal in death penalty cases in California.

**CHIEF JUSTICE RONALD GEORGE:** Justice Kennard will respond to your question.

**SECOND STUDENT:** Thank you.

**ASSOCIATE JUSTICE JOYCE KENNARD:** The short answer is, there is an automatic appeal from a judgment of death because the California Legislature has said so in a statute, which is Penal Code section 1239. But I assume that you really want to know why the Legislature passed such a law.

Because death is the ultimate penalty and once administered cannot be undone, the Legislature wanted to make sure that procedural mistakes would not result in the loss of a defendant's right to appellate review. And the Legislature also wanted to make certain that even when a defendant does not want to file an appeal, a reviewing court nevertheless goes through the record of the trial proceedings to make sure that the trial was fair. In short, the automatic appeal is the safeguard that the California Legislature has provided to ensure the fairness and reliability of every judgment of death in this state.

**SECOND STUDENT:** Thank you.

**ASSOCIATE JUSTICE JOYCE KENNARD:** Thank you.

**THIRD STUDENT:** Good morning, Mr. Chief Justice and Associate Justices of the Supreme Court. My name is Cody Van Ert and I am a student at Bishop Quinn High School.

My student – My question today has to do with activist judges and how much has been said of them recently in political circles. And specifically it is, what do you see as a proper role of the judiciary?

**CHIEF JUSTICE RONALD GEORGE:** Justice Baxter will respond to your question.

**ASSOCIATE JUSTICE MARVIN BAXTER:** Thank you, Cody, for that thoughtful question.

Actually, the accusation of activism within the judicial branch goes way back in our history. And the landmark case of *Marbury v. Madison*, which was authored shortly after the birth of our nation by Chief Justice John Marshall, defined the proper role of the judiciary. And that case held that if a federal statute was incompatible with the Constitution then the Constitution would prevail, and that a law repugnant to the

Constitution was void and the courts must follow their understanding of the Constitution, even when contrary to the Legislature's will. And this was so, in Marshall's famous words, and I'll quote, "It is emphatically the province and duty of the judicial department to say what the law is." So, the principle was firmly established throughout the history of our country that the courts are the ultimate interpreters of the Constitution and laws as against the other branches of government.

On the other hand, at least within constitutional limits, the Legislature has the final responsibility as to the creation of law. And it's the Legislature's job to adopt statutes that establish the public policy of this state and nation. And if the statutory meaning is plain on its face, that meaning must govern and the court's inquiry really goes no further than that.

It's not always clear on its face and when it isn't, it is a proper role for the courts to fairly interpret a statute, to interpret it to acquire clarity. But even then, the ultimate objective of the court in interpreting a statute is to do its best to ascertain what the legislative intent was in the creation of that statute.

So, the charge of judicial activism is usually made by someone who disagrees with the court's invalidation of a statute on constitutional grounds or disagrees with the court's interpretation of a statute that's unclear on its face.

**FOURTH STUDENT:** Good morning, Mr. Chief Justice and Associate Justices. My name is Justin Dushare from Shasta High School and I was wondering to what extent do the justices feel bound by precedent in deciding the cases before them?

**CHIEF JUSTICE RONALD GEORGE:** Justice Werdegarr will respond to your question.

**ASSOCIATE JUSTICE KATHRYN WERDEGAR:** Thank you, Justin, for that question.

Precedent, as you know, means a court has already decided a legal issue. If the precedent comes from the United States Supreme Court, we are absolutely bound by it. We have no choice, they have the last word.

However, within the State of California, we are the highest court and if the issue has been decided by our court before, we generally do tend to follow precedent because the strength of our legal system is its predictability and stability, so that people in their



daily lives can know how to manage their affairs and what the law will be. So, we very much try to establish and to follow precedent.

However, if time has shown that the precedent that we're looking at is unwise or is not working well or if there has been a significant change of circumstances that justifies reexamining the question, then it is our responsibility to make that change. But generally, precedent is very much honored.

**FOURTH STUDENT:** Thank you.

**FIFTH STUDENT:** Chief Justice – pardon me. Chief Justice and Associate Justices, my name is Katy Roland and I'm from Shasta High School. And I would like to know to what extent is the California Supreme Court influenced by the decisions of the United States Court of Appeals for the Ninth Circuit and other federal and state courts?

**CHIEF JUSTICE RONALD GEORGE:** Justice Chin will respond to your question.

**ASSOCIATE JUSTICE MING CHIN:** Well, Katy, the answer to your question really depends on the issue that is brought to us: Is it a federal question or is it a state question? And of course, if it's a federal question, as has already been stated, the U.S. Supreme Court is supreme and we follow any decisions passed down by that court on an issue of a federal question.

Now, on the decisions of other federal courts, we are not bound by those decisions, but we naturally consider those decisions if we are deciding a federal question and we follow those decisions only if we are persuaded by a particular opinion.

Now, if it happens to be a state question, either on a state statute or the state Constitution, we are not bound to follow the – either the federal courts or other state courts on – on those – those cases. We will look at them; we will follow them if we are persuaded by their analysis.

The final area that you should at least be aware of is that we do not generally issue advisory opinions but on occasion we are asked for our opinion by other courts. For instance, if the Ninth Circuit asks us to decide a particular state issue that is involved in a case that they are deciding, and they satisfy certain requirements, we will issue a – an opinion advising the Ninth Circuit of the California law.

But that is the general answer to your excellent question.

**FIFTH STUDENT:** Thank you.

**SIXTH STUDENT:** Mr. Chief Justice and Associate Justices, my name is Jeffrey Haggenson from Enterprise High School. My question is on behalf of Tim Molarius of Corning High School.

What is the confirmation process for appointment to the California Supreme Court and how does it compare to the process for appointment to the federal courts?

**CHIEF JUSTICE RONALD GEORGE:** All right. Justice Moreno will respond to that question.

**ASSOCIATE JUSTICE CARLOS MORENO:** Thank you, Chief. And thank you, Jeffrey.

The confirmation and appointment process in each instance is similar in most respects but it's different in one significant way. It's similar in the sense that the appointment process starts off with the judicial candidate, at the request of the appointing authority, responding to a very extensive questionnaire that probes quite deeply into one's background and experience, career, as a lawyer. The appointment by the chief executive of the state, of course, is by the Governor, and for a federal court it is by the President of the United States. In each instance, the candidate is evaluated by a group of attorneys; in California, by the Commission on Judicial Nominees Evaluations, a committee that's a part of the State Bar. At the federal level, one is evaluated by the American Bar Association. And also, as part of that evaluation, there's a fairly intrusive FBI background investigation.

Where the process differs is with respect to the actual confirmation. A California Supreme Court justice is confirmed at a hearing held by the Commission on Judicial Appointments that's chaired by the Chief Justice; other members are the Attorney General and the senior Court of Appeal justice in the state. And one is confirmed if you garner a two-to-one or majority of the votes.

For a federal appointment, the candidate must be confirmed by the Senate. Initially, one attends and is subject to a hearing by the Senate Judiciary Committee. The candidate may be asked certain questions at that hearing and one is then voted out of committee and placed for a vote on the full floor. And that generally happens within a few weeks after the committee hearings. In either instance, the appointment becomes effective when the candidate is actually sworn in.

So, that's basically a brief summary of the appointment process.

**SIXTH STUDENT:** Thank you.

**SEVENTH STUDENT:** Mr. Chief Justice and Associate Justices of the Supreme Court, my name is Craig Schneider and I'm from Fall River High School.

What I would like to know is, do you ever receive harsh negative reaction to any of the court's decisions, either from the public or the press? And how do you deal with this?

**CHIEF JUSTICE RONALD GEORGE:** Members of this court and judges at all levels do receive criticism and that, of course, is the fundamental right in our democracy: To have government institutions and individuals subject to criticism. However, it's not always informed criticism and often the focus is on who won or who lost. Was it the criminal who won or the prosecution? Was it the consumer or the business? And there is not always the best focus on really the process and that's what's really important: How the court decided a particular legal question. How it got to the result that it ended up with.

And I think that there has to be more awareness of the role of the courts in applying neutral principles of law. And sometimes – and this goes back to some of the matters that Justice Baxter referred to in answering the earlier question – sometimes it's viewed as judicial activism, or why wasn't the statute passed by the Legislature upheld by the court or why wasn't an initiative passed by the people upheld? And what is often lost in the process is that the people of the state have bound themselves by adopting a Constitution, just as the people of the United States as a whole have bound themselves by adopting a federal Constitution. And those Constitutions represent the ultimate will of the people that prevails over the temporary will of the people in adopting a particular statute or initiative.

And if something runs afoul of the Constitution, it is our duty to not uphold it. And I think there needs to be more understanding in terms of criticizing judicial decisions. It is a right, but to be legitimate criticism, it must be based upon the process that judges are bound to follow. And I think that what we need is more education of the public and I don't mean just at the high school or college level. We need more education of the public in terms of what the process of the courts is all about.

And I think sessions such as we're having today, which will be broadcast around the state, help people have a better understanding of what the role of the courts is in upholding the rule of law and having an independent judicial process, unlike what exists in many other countries.

Thank you for your question.

**SEVENTH STUDENT:** Thank you.

**EIGHTH STUDENT:** Mr. Chief Justice and Associate Justices, my name is Kaitlyn Spalding and I am asking a question on behalf of Jon Crane, a student at Fall River High School.

How did you work your way up to where you are now as a justice of the California Supreme Court and what challenges did you face in the process?

**CHIEF JUSTICE RONALD GEORGE:** Justice Kennard will respond to that question.

**ASSOCIATE JUSTICE JOYCE KENNARD:** Oh, dear. After working as a lawyer in state service for some 11 years, Governor George Deukmejian in 1986 appointed me to what was then the Municipal Court bench. A year later, I was elevated to the Superior Court, the next year to the Court of Appeal, and a year thereafter to the California Supreme Court. Naturally, it was gratifying to see the many, many hours of hard work rewarded by Governor Deukmejian in such a very short time span.

As you can see, the judicial career process for me was a smooth one. The challenges that I faced occurred very early in life. They are as follows:

Spending my early childhood in an internment camp in West Java during World War II shortly after the death of my father when I was just one year old, then at age 10 moving to the jungle country of West New Guinea and living under very difficult conditions. Thereafter, at age 14, moving to Holland to get an education but that plan fell through when, just before my 16th birthday, my right leg was amputated.

At age 20, I immigrated to the United States with just a few hundred dollars in my pocket. Eventually, some seven years later, I was able to realize my dream of getting a real education. I finished college in three years, while working part-time at least 20 hours a week to support myself financially.

These, in a nutshell, were the challenges I overcame in my life. And the message for you students is this: Go after your dreams.

**EIGHTH STUDENT:** Thank you for sharing that personal information with me. You're an inspiration.

**ASSOCIATE JUSTICE JOYCE KENNARD:** Thank you.

**NINTH STUDENT:** Mr. Chief Justice and Associate Justices of the Supreme Court, my name is Evan Drakes of Shasta High. My question is, to what extent do political considerations play a part in the appointments of the Supreme Court?

**CHIEF JUSTICE RONALD GEORGE:** Justice Baxter will respond to your question.

**ASSOCIATE JUSTICE MARVIN BAXTER:** Well, the term “political considerations,” that term has positive and negative connotations. And to the extent that it has positive connotations, I think it’s a very important part of the judicial appointment process.

In California, when there is a vacancy during the term of office, the Governor is the one who has the responsibility of making an appointment. The Governor is accountable to the people of the State of California and it is natural that any governor, in making probably the most important appointment during his or her term of office, will want to appoint an individual or individuals who will be very well received by the citizens of California in discharging the accountability that he has to those citizens.

So, in that respect, political considerations are very important. And again, I – I use the term in the most positive sense. But this doesn’t happen in a vacuum. As Justice Moreno pointed out, before the Governor is in a position to exercise this responsibility of appointing someone to the California Supreme Court, that individual will have been evaluated through a very comprehensive process by the State Bar of California, a special commission of the State Bar, that will make every effort to find out as much as possible about the applicant or applicants and ultimately will evaluate those individuals anywhere from exceptionally well qualified to not qualified. And that report is provided to the Governor and I can assure you that all the governors that I’m aware of, you know, will consider that evaluation carefully.

But that’s not the end of the line because even after that, as Justice Moreno mentioned, there is a confirmation process with the Commission on Judicial Appointments, consisting of the Chief Justice, the Attorney General, and the senior presiding justice of the Court of Appeal. And following that, at the next gubernatorial election the appointee is on the ballot and must be approved by a majority of the votes cast at that next gubernatorial election.

So, to the extent that political – political considerations are – to the extent that that term is being used in a very positive way, as I interpret it, it is a very important part of the process.

**NINTH STUDENT:** Thank you.

**TENTH STUDENT:** Mr. Chief Justice and Associate Justices of the Supreme Court, my name is Kimberly Epperson and I am from Shasta High School.

Since so many governmental issues end up being decided in the courts, have judges become policy makers? And how do you feel about that?

**CHIEF JUSTICE RONALD GEORGE:** Justice Werdegarr will respond to your question.

**ASSOCIATE JUSTICE KATHRYN WERDEGAR:** Thank you for that question. It could be said that we are policy makers but it is not by choice and let me explain. As an early observer of American government, Alexis de Tocqueville, said, every issue of significance in the United States comes before the courts. Unlike the Legislature, we cannot choose what we want to hear or what issues we want to resolve; our responsibility is to decide the issues that are brought to us. We are supposed to, the essence of judicial restraint, is to decide those issues without regard to our personal policy preferences.

However, decide them we do and our decisions do impact policy. And how do I feel about that? I feel a great responsibility; however, we are not the last word. If we are interpreting legislation, it's been mentioned earlier that sometimes legislation – oftentimes legislation is not clear, we have to resolve what it means. If we are wrong, the Legislature can change our opinion. If we make a constitutional decision, the Legislature cannot just pass legislation to say that we were wrong but they can amend the Constitution. And one way they do it, sometimes, in California, is by the initiative process.

In fact, in the November election there's going to be a proposed constitutional amendment about a parental notification before a minor can avail herself of an abortion. If that amendment passes, it will go counter to an earlier decision by this court. That certainly is a policy question and in the end, the people of the State of California can speak to it.

So, thank you for your question.

**TENTH STUDENT:** Thank you very much.

**ELEVENTH STUDENT:** Hello, Mr. Chief Justice and Associate Justices of the Supreme Court. My name is Jonathan Barrett and I am about to read a question on behalf of Cliff Manly of Fall River High School. And he asks, "What was the most difficult case you had to decide as an appellate justice or trial judge?"

**CHIEF JUSTICE RONALD GEORGE:** All right. We'll have Justice Chin respond to that question.

**ASSOCIATE JUSTICE MING CHIN:** Thank you, Jonathan. The answer to that question depends on a lot of considerations.

Difficulty of result: Would certainly have to be the death penalty cases because they are so final and you have to get it right.

Difficulty in the sense of complexity of the subject matter: For me, that would have to be the admissibility of DNA evidence in a criminal case. When I got those cases, I knew very little about the science of genetics. I had to learn that science and then apply it. I have felt so strongly that California judges ought to know more about that subject matter that I participated in developing a CD-ROM training program for judges and lawyers. And the – the judges of California, tomorrow, will holds its inaugural event. The Chief Justice will give the keynote speech at a program at the Salk Institute on gene therapy and addictive disorders. So, California is certainly doing its part to train its judges in the field of science and technology.

But those cases, for me, are the toughest.

**ELEVENTH STUDENT:** Thank you very much.

**CHIEF JUSTICE RONALD GEORGE:** Thank you. And we'll now entertain our last question from the students.

**TWELFTH STUDENT:** Good morning, Mr. Chief Justice and Associate Justices. My name is Alex Alvord, I am from Bishop Quinn High School. And my question reads, "Would you favor lifetime appointments to the California Supreme Court? And what are the arguments for and against?"

**CHIEF JUSTICE RONALD GEORGE:** All right. Well, Justice Moreno is perfectly situated to respond to that question, having received both a federal lifetime appointment and state appointment.

Justice Moreno.

**ASSOCIATE JUSTICE CARLOS MORENO:** Thank you, Chief. And thank you, Alex. As you may know, Alex, federal judges have a lifetime appointment and can continue in office indefinitely and in fact, after retirement, continue to receive their full

salary for the balance of their life. The framers of the Constitution thought that this would ensure judicial independence and keep judges free of political and economic pressure in deciding cases.

The terms for California Supreme Court justices are for 12 years, subject to being retained for subsequent 12-year terms through a process known as retention elections. A retention election is essentially a yes or no vote on the candidate with no opposing candidate in the election. Historically, in our state, few justices have not been retained, although in 1986, three members of this court were not retained by the people of the State of California.

Some question if this process, that is, the retention process as opposed to a lifetime appointment, subjects judges or justices to political pressures; that is, if it forces them to conform their view to the majority and not the law. But I don't think this really has been demonstrated in California history.

We have what I term to be a hybrid system; that is, a reasonably long term, 12 years, with an opportunity for the people to remove a judge if they're not satisfied with that judge's performance. So, I think in the final analysis, although I think a lifetime term would be preferable, this system that we have draws an appropriate balance between judicial independence and the power of the people to remove a judge from his or her office where that might be appropriate.

**TWELFTH STUDENT:** Thank you.

**CHIEF JUSTICE RONALD GEORGE:** I want to thank all of the students and their teachers for engaging in this process of a very thoughtful series of questions that I think are very illuminating, both for the students present in the courtroom and for those watching the televised broadcast. I think that they illustrate the benefit of outreach efforts and of education about the judicial process and how important that is to both our youthful and our adult population.

At this time, I will ask the Clerk to call this morning's calendar.



In light of the current vacancy on the California Supreme Court, the Honorable William W. Bedsworth, Associate Justice, Court of Appeal, Fourth Appellate District, Division Three, sitting on the following case under assignment by the Chairperson of the Judicial Council, joined the Court at the bench.

S121009      The People, Plaintiff and Respondent  
                         v.  
                         R.J. Reynolds Tobacco Company, Defendant and Appellant  
                         Cause called. H. Joseph Escher III argued for Appellant.  
                         Dennis Eckhart, Office of the Attorney General, argued for Respondent.  
                         Mr. Escher replied.  
                         Cause submitted.

Justice Bedsworth, not participating in the following matters, did not join the bench.

In light of the current vacancy on the California Supreme Court, the Honorable Roger W. Boren, Administrative Presiding Justice, Court of Appeal, Second Appellate District, sitting on the following case under assignment by the Chairperson of the Judicial Council, joined the Court at the bench.

S123074      The People, Plaintiff and Respondent  
                         v.  
                         Jarmaal Laronde Smith, Defendant and Appellant  
                         Cause called. Gregory Marshall opened argument for Appellant.  
                         Rachelle Newcomb, Office of the Attorney General, argued for  
Respondent.  
                         Mr. Marshall replied.  
                         Cause submitted.

Justice Boren, not participating in the following case, did not join the bench.

In light of the current vacancy on the California Supreme Court, the Honorable Carol A. Corrigan, Associate Justice, Court of Appeal, First Appellate District, Division Three, sitting on the following case under assignment by the Chairperson of the Judicial Council, joined the Court at the bench.

S040703      The People, Respondent

                 v.

                 James Robinson, Jr., Appellant

                 Cause called. Susan K. Marr argued for Appellant.

                 Analee J. Brodie, Office of the Attorney General, argued for  
Respondent.

                 Ms. Marr replied.

                 Cause submitted.

Court recessed until 2:00 p.m. this date.

Court reconvened pursuant to recess.

Members of the Court and Officers present as first shown.

Justice Corrigan, not participating in the following case, did not join the bench.

In light of the current vacancy on the California Supreme Court, the Honorable Dennis A. Cornell, Associate Justice, Court of Appeal, Fifth Appellate District, sitting on the following matters under assignment by the Chairperson of the Judicial Council, joined the Court at the bench.

S118561      Ray Kinsman et al., Plaintiffs and Respondents  
                  v.  
                  Unocal Corporation, Defendant and Appellant  
                  Cause called. Daniel U. Smith argued for Respondents.  
                  Stephen E. Norris argued for Appellant  
                  Mr. Smith replied.  
                  Cause submitted.

Justice Cornell, not participating in the following case, did not join the bench.

In light of the current vacancy on the California Supreme Court, the Honorable Paul H. Coffee, Associate Justice, Court of Appeal, Second Appellate District, Division Six, sitting on the following case under assignment by the Chairperson of the Judicial Council, joined the Court at the bench.

S117590      Barratt American Incorporated, Plaintiff and Appellant  
                  v.  
                  City of Rancho Cucamonga, Defendant and Respondent  
                  Cause called. Walter P. McNeill argued for Appellant.  
                  David P. Lanferman, appearing for Amicus Curiae California Building  
                  Industry Association, continued argument for Appellant.  
                  B. Tilden Kim opened argument for Respondent.  
                  Jeffrey V. Dunn, appearing for Amicus Curiae California Cities and  
                  California State Association of Counties, continued argument for  
                  Respondent.  
                  Mr. McNeil replied.  
                  Cause submitted.

Court adjourned.

**S135734**

IN THE MATTER OF THE SUSPENSION  
OF ATTORNEYS PURSUANT TO RULE 962,  
CALIFORNIA RULES OF COURT  
Order filed

Having been provided proof of compliance  
pursuant to Family Code 17520, the  
suspension of **Scott A. Cardiner, #76008**,  
pursuant to our order filed on July 21, 2005,  
is hereby terminated.  
This order is final forthwith.